

October 28, 2019

VIA ELECTRONIC FILING

Mr. David W. Stark, Esquire
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Dominion Energy South Carolina, Inc.'s Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended) – S.C. Code Ann. Section 58-41-20(A) Docket No. 2019-184-E

Dear David:

Dominion Energy South Carolina, Inc. ("DESC") respectfully objects to the request made on behalf of Johnson Development Associates, Inc. ("JDA") and the South Carolina Solar Business Alliance ("SCSBA") by email dated October 23, 2019, that the intervenors in Docket No. 2019-184-E now be allowed to file proposals for power purchase agreements ("PPAs") with terms longer than ten years pursuant to S.C. Code Ann. § 58-41-20(F)(1). As JDA and the SCSBA's request itself notes, "the record . . . is essentially closed" in Docket No. 2019-184-E—the Public Service Commission of South Carolina ("Commission") held a two-day hearing in this matter on October 14 and 15, 2019, and no new evidence or testimony by the parties is to be presented in this docket except for late-filed exhibits as requested by the Commission. In Docket No. 2019-184-E, JDA and the SCSBA, pursuant to S.C. Code Ann. § 58-41-20(F)(1), had the statutory obligation and duty as part of their case to propose, if they so desired, an alternative power purchase agreement with a term longer than ten years, including a reduction in the contract price relative to the ten year avoided cost. Simply put, JDA and SCSBA chose not to present the Commission with an alternative power purchase agreement as S.C. Code Ann. § 58-41-20(F)(1) requires and is now

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Mr. David W. Stark, Esquire
October 28, 2019
Page 2

attempting to cure its deficiency eight days after the hearing has concluded in Docket No. 2019-184-E.¹

JDA and SCSBA were represented at the hearing in Docket No. 2019-184-E with counsel present for the duration of the hearing and presented witnesses and evidence for the Commission's consideration. These parties also had the opportunity, pursuant to the Commission's July 18, 2019 Prefile Testimony Letter, to prefile testimony in this docket, and in fact they did file such testimony. These parties, therefore, had ample opportunity to present whatever evidence or proposals they wished for the Commission to consider, and for those proposals to be challenged and subjected to cross-examination by the other parties in this case. JDA and SCSBA, however, chose not to raise this issue during the hearing in Docket No. 2019-184-E but instead waited until eight days after the conclusion of the hearing. Contrary to JDA and the SCSBA's argument otherwise, there is no presumption that such proposals would be made in proposed orders; proposed orders include matters raised during the hearing, not new matters. DESC submits that the opportunity to raise this issue has passed, and that JDA and the SCSBA have waived their right to raise this issue in these proceedings.²

Allowing this request at this time would be highly prejudicial to DESC. The Commission established a schedule in this case for the presentation of testimony and evidence for a reason—to allow the parties an opportunity to present evidence and proposals, to comment on the positions and proposals of other parties, and to have those proposals tested in an evidentiary hearing before the Commission. The Commission's order also comports with the requirements of Act 62, which provides that proceedings conducted thereunder “shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.”

¹ It is DESC's understanding that the issue prompting JDA and the SCSBA's email dated October 23, 2019, arose during the hearing in Docket No. 2019-185-E and Docket No. 2019-186-E. DESC is not a party in these dockets, and for this reason alone, the Commission should deny JDA and the SCSBA's attempt to apply matters that arose in those dockets to DESC.

² JDA and the SCSBA state in their email that, “[t]he statute does not provide for an opportunity for comments in response by the companies” S.C. Code Ann. § 58-41-20(F)(1) does not contain such language because Act 62 did not contemplate that a party would raise a new matter after the conclusion of a hearing conducted pursuant to S.C. Code Ann. § 58-41-20(A). Again, JDA and the SCSBA had the statutory obligation under S.C. Code Ann. § 58-41-20(F)(1) to propose, if they so desired in a proceeding conducted under S.C. Code Ann. § 58-41-20(A), an alternative power purchase agreement with a term longer than ten years, including a reduction in the contract price relative to the ten year avoided cost. They did not do so.

Mr. David W. Stark, Esquire
October 28, 2019
Page 3

S.C. Code Ann. § 58-41-20(A)(2); *see* § 58-41-20(F)(1) (noting that “the commission will make such a determination [regarding whether to approve PPAs with a duration longer than ten years] in proceedings conducted pursuant to subsection (A)”). JDA and the SCSBA’s request, however, ignores the requirements of Act 62, seeks to circumvent this process, and would deny DESC and the other parties the opportunity to test and critique these proposals, and to present evidence and testimony challenging the proposals.

S.C. Code Ann. § 58-41-20(F)(1) requires that any PPA with a duration longer than ten years “must contain additional terms, conditions, and/or rate structures . . . including, but not limited to, a reduction in the contract price relative to the ten year avoided cost.” By attempting to raise this issue now, after the taking of evidence in this case has closed, JDA and SCSBA essentially seek to avoid this reduction in avoided cost that is required by the statute. The appropriate method for calculating avoided costs was the subject of the two-day hearing conducted by the Commission, and was the primary focus of this months-long case. By delaying this proposal until after the hearing and presentation of evidence has concluded, JDA and SCSBA, in effect, seek to deny the other parties and the Commission an opportunity to consider and hear evidence on what these reduced avoided costs should be. This is again highly prejudicial to DESC, contrary to the requirements of Act 62 and the Commission’s prefiled testimony instructions, and outside the established norms for proceedings before this Commission.

For these reasons, DESC respectfully submits that the request submitted by JDA and SCSBA be denied.

Very truly yours,



K. Chad Burgess

KCB/kms

cc: All parties of record in Docket No. 2018-184-E
All parties of record in Docket No. 2018-185-E
All parties of record in Docket No. 2018-186-E
(all via electronic mail only)